



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF MAY 27, 2004**

CALL TO ORDER: Vice Chairperson Wieckowski called the meeting to order at 7:00 p.m.

PRESENT: Vice Chairperson Wieckowski, Commissioners Harrison, Lydon, Natarajan, Sharma

ABSENT: King, Weaver (excused)

STAFF PRESENT: William Meeker, Planning Director
Larissa Seto, Senior Deputy City Attorney II
Norm Hughes, City Engineer
Cliff Nguyen, Planner II
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Minutes of April 22 were approved with the following correction:

Page 5, near bottom of page, **Commissioner Harrison** speaking: Add He opined that BART would probably be used more by Staff than by the visitors to the clinic.

Regular Minutes of May 13, 2004 were approved as submitted.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 2, 6, AND 7.

IT WAS MOVED (HARRISON/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1, 2, 6, AND 7.

Item 1. BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059) – to consider an appeal regarding the completeness of an application for a Preliminary Grading Plan and an Initial Study and to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area. (Continued from May 13, 2004.)

CONTINUE TO JUNE 10, 2004.

Item 2. WALNUT/MISSION – 38987 Mission Boulevard – (PLN2004-00189) - to consider a Tentative Tract Map, Preliminary Grading Plan and Private Street approval for 25 residential condominium units located at the westerly quadrant of Mission Boulevard and Walnut Avenue in the Central Planning Area. A Mitigated Negative Declaration was previously approved for the General Plan Amendment and Planned District for this project. (Continued from May 13, 2004.)

HOLD PUBLIC HEARING;

AND

FIND THE PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION WITH A CERTIFICATE OF FEE EXEMPTION ADDRESSES THE PROPOSED PROJECT AND NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2004-00189 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS;

AND

FIND PLN2004-00189 PER EXHIBIT "A" (TENTATIVE TRACT MAP 7518, PRELIMINARY GRADING PLAN AND PRIVATE STREET) AND EXHIBIT "B" (FINDINGS AND CONDITIONS OF APPROVAL) FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

APPROVE PLN2004-00189 IN CONFORMANCE WITH EXHIBIT "A" (TENTATIVE TRACT MAP 7518, PRELIMINARY GRADING PLAN AND PRIVATE STREET) AND EXHIBIT "B" (FINDINGS AND CONDITIONS OF APPROVAL).

- Item 6. CALVARY CHAPEL – 40645 Fremont Boulevard – (PLN2004-00200)** - to consider a conditional use permit amendment to allow the expansion of an existing 8,300 square-foot religious facility to include an additional, book store (375 square feet), classroom (375 square feet), and a utility room (150 square feet), of 900 square feet in an existing 58,300 square-foot, retail commercial building located in the Irvington Planning Area. This project is categorically exempt from review under CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures).

HOLD PUBLIC HEARING;

AND

FIND PLN2004-00200 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE FUNDAMENTAL GOALS SET FORTH IN CHAPTER 2 OF THE GENERAL PLAN. ADDITIONALLY, THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THE IRVINGTON PLANNING AREA;

AND

APPROVE CONDITIONAL USE PERMIT AMENDMENT PLN2004-00200, AS SHOWN ON EXHIBIT "A" (SITE PLAN, NEW TENANT SPACE FLOOR PLAN), SUBJECT TO FINDINGS AND CONDITIONS AS SET FORTH IN EXHIBIT "B", (FINDINGS AND CONDITIONS).

- Item 7. PALO ALTO MEDICAL FOUNDATION BUILDING 2 – 3200 Kearney Street – (PLN2004-00249)** - to consider a Preliminary Grading Plan for a proposed two-story 73,600-square-foot medical office with underground parking located at 3200 Kearney Street. A Mitigated Negative Declaration has been prepared and circulated for this project.

HOLD PUBLIC HEARING;

AND

FIND THAT THE PROJECT HAS BEEN EVALUATED THE POTENTIAL FOR TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

FIND PLN2004-00249 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S NATURAL RESOURCES CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THAT CHAPTER;

AND

APPROVE PLN2004-00249, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES:	5 – Harrison, Lydon, Natarajan, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2- King, Weaver
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 3. PRASAD RESIDENCE – 44301 Hunter Terrace - (PLN2003-00099)** - to consider a referral of Site Plan and Architectural Approval of a new 7,038 square foot residence (includes attached garage) on a 1-acre lot in the Mission San Jose Planning Area. This project is categorically exempt from review under CEQA pursuant to Section 15303 (a) (Construction of one single-family residence in an urbanized area).

Jim Gibbon, architect, stated that this project was originally submitted for review by staff in October, 2002 and has since "been reviewed to death by staff." They agreed with all conditions, but one, which was changing two windows that were below balconies from arched to square.

Vice-Chairperson Wieckowski clarified that the applicant was asking that Condition A-11 be deleted.

Commissioner Natarajan asked why the footprint of the house could not be reoriented to run parallel to the contours of the land. She asked if the comment concerning rotating the house had been contained in the original staff review; what was the size of the yard, if it was the only usable outdoor living space and how the design of the balustrades was reached;

Mr. Gibbon, replied that the house was nested in the site to allow for parking on the lower level. If the building was rotated, regulations concerning grading, wall height and stepping of the building could not be met without redesigning the entire building (and garage would need to be moved to a different location). Approximately 70,000 dollars of work would have been wasted. The original staff review did not include any comment about rotating the house. The rear yard would measure approximately 30 feet by 40 feet and it was the only space available without more grading. They would work with staff regarding the final balustrades design.

Commissioner Sharma asked why the applicant did not wish to change the shape of the two windows mentioned in Condition A-11. Did he prefer the arched windows?

Mr. Gibbon replied that changing the windows would be inconsistent with the design. They preferred the arched windows but would agree to square windows, if the Commission agreed that the condition should stay.

Vice-Chairperson Wieckowski opened and closed the public hearing.

Commissioner Sharma asked if staff would agree to deleting Condition A-11 and how important was the changed shape to the overall design of the house.

Planner Nguyen replied that rectangular shaped windows were more appropriate under the balconies.

Commissioner Harrison asked if responses from agencies and organizations were required for approval. Regarding the easement required under A-23, he asked if the City would assume liability if the easement was accepted by the City. (He also noted that a similar condition (A-21) for the next item to be heard did not read like a condition.)

Planner Nguyen stated that the project was exempted under CEQA.

Senior Deputy City Attorney Seto replied that the easement was a non-possessory interest type of easement, as described in the Hillside Initiative, and did not grant the right for public access.

Planning Director Meeker suggested inserting "shall" into that condition.

Commissioner Natarajan asked if this project was before the Commission because of Measure T and its proposed location on the site.

Planner Nguyen replied that the portion of the draft toe of the hill line crossed a portion of the footprint on the south side of the house. If the house was moved below the toe of the hill, which in this case would be to a higher level, it would have more of a visual impact.

Commissioner Harrison asked if the applicant had volunteered to have this project considered under Measure T.

Planner Nguyen replied that he was correct.

Commissioner Natarajan sympathized with the applicant concerning the long design process. She reminded the public that the Planning Commission's role was to also review design plans and sometimes it seemed like nitpicking. For example, the recommendation that the two arched windows be changed to rectangular was because the arch shape sometimes could not be completed when on a lower floor. A rectangular window would not pose such a problem during construction. She suggested that Condition A-11 be modified to specify that the arched windows be complete arches and consistent with the rest of the windows. She encouraged the applicant to continue working with staff concerning the arches, the balustrades and the landscaping.

Commissioner Sharma agreed with Commissioner Natarajan's comments and suggested that A-11 be deleted. He would support the project.

Vice-Chairperson Wieckowski appreciated the analysis performed regarding the toe of the hill.

Commissioner Harrison applauded the applicant for agreeing to allow the project design to be reviewed under Measure T.

IT WAS MOVED (HARRISON/LYDON) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-2-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

CHANGE CONDITION A-11 TO STATE APPLICANT SHALL CONTINUE TO WORK WITH STAFF TO ENSURE THAT THE ARCHED WINDOWS BELOW THE TERRACES ON THE WEST AND SOUTH ELEVATIONS ARE “COMPLETE ARCHES” AND PROPERLY FIT BELOW THE UPPER FLOOR. IN ADDITION, THE APPLICANT SHALL ALSO CONTINUE TO WORK WITH STAFF ON THE DESIGN OF THE BALUSTRADES AND ASSOCIATED LANDSCAPING. (AS AMENDED BY THE PLANNING COMMISSION ON MAY 27, 2004.)

AND

FIND THAT THE PROJECT PLN2003-00099 AS PROPOSED IS CATEGORICALLY EXEMPT FROM CEQA UNDER SECTION 15303 AS IT RELATES TO THE CONSTRUCTION OF ONE SINGLE-FAMILY RESIDENCE;

AND

FIND THE PROJECT PLN2003-00099 AS RECOMMENDED BY STAFF IS CONSISTENT WITH STANDARDS, GOALS AND POLICIES OF THE HILL AREA DEVELOPMENT POLICIES, AND GENERAL PLAN FOR THE REASONS INDICATED IN THIS REPORT;

AND

FIND THE PROJECT PLN2003-00099 IS CONSISTENT WITH THE GOALS AND PERFORMANCE STANDARDS ADOPTED UNDER THE HILL INITIATIVE OF 2002, MEASURE T, FOR THE REASONS INDICATED IN THIS REPORT;

AND

APPROVE THE PROJECT PLN2003-00099 AS RECOMMENDED BY STAFF AND SHOWN ON EXHIBIT “A”, BASED UPON THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “B” AND COLOR AND MATERIAL BOARD, EXHIBIT “C”.

The motion carried by the following vote:

AYES:	5 – Harrison, Lydon, Natarajan, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2- King, Weaver
RECUSE:	0

- Item 4. DURHAM ROAD STATION – Sabercat Road – (PLN2003-00119)** – to consider a rezoning from a City-initiated Planned District to a Precise Planned District for the development and use of a gas station/food mart facility with carwash located on Sabercat Road (NW corner of Sabercat Road and Durham Road) in the Mission San Jose Planning Area. A Mitigated Negative Declaration has been prepared for the project.

Muthana Ibrahim, Designers Collective, stated that an 263-foot wide, east-west easement ran through the property, with the Hayward Fault running north-south on the eastern portion of the property (east of Sabercat Road). The convenience market would be 2,355 square feet, the car-wash tunnel would be 946 square feet, there would be four fuel dispensers with a canopy. The driveway in and out of the site would be of stamped concrete and connected to the right-of-way. Over a two-year period, four iterations of the project had been brought to staff before the final plan was approved. Architecture would be mission style with stucco walls, gabled clay tile roof, stained rafters and fascias, access porticos, towers, brick base, trellises and blue accent color.

Commissioner Natarajan asked the convenience store hours of operation and if alcohol would be sold. Were the blue tiles to be used because it was a Chevron color?

Larry Schaadt, applicant, replied that the station would operate 24 hours with the carwash operation limited to 8:00 a.m. to 8:00 p.m. Alcohol would not be sold. Staff had recommended the blue tiles during the last iteration.

Commissioner Sharma asked how much traffic was expected to be generated by this facility. How many vehicles were needed for the business to survive?

Mr. Schaadt replied that the station would have only four pumps, the convenience store and the carwash, which were expected to generate customers from people living on the east side of the I-680 freeway, along with people traveling southbound, as there were no gas stations on that side of the freeway. Traffic should not be an issue. Sabercat would be slightly widened and both sides would be improved with street trees, sidewalks and curbs and gutters, along with a dedicated left-turn lane into the site. The potential profit of a facility was based upon the fuel volume projections. He believed that four pumps would meet the fuel volume projections, which was considered a small facility.

Commissioner Harrison asked if the applicant was aware of (and agreed to) all of staff's suggestions and conditions. Given the proximity of other stations in the area, did the applicant feel the area could support his station.

Mr. Schaadt stated that the other stations were very busy with no freeway visibility. He claimed that the architecture (except for the logo) would disguise the fact that a gas station was on this site. All of his many stations in the state had "theme" architecture that blended in with architecturally sensitive areas. This station would provide a service to the people living on the east side of the freeway that they currently did not have; it would be the only gas station that was visible from the freeway; and the upgraded facility would attract enough customers to make the business viable.

Commissioner Harrison disagreed that the station would look like anything other than a gas station, "The gas pumps would give it away." He had two pet peeves: 1) After purchasing a carwash, the customer discovered that the carwash was out of order or was closed and the customer had seven days to use the carwash from date of purchase and 2) Air and water were charged for.

Mr. Schaadt reminded the Commission that over 50 percent of the site would also be landscaped to provide an attractive gateway to the eastern hills. A carwash would not be offered after the carwash was closed and air and water would be free.

Commissioner Lydon asked if any other uses had been considered for this site. Had the easement and seismic fault dictated where the station was located on the site? If the station would be difficult to detect as a gas station, how would the I-680 traveler know the station was there?

Mr. Schaadt replied that the site could probably accommodate a fast-food restaurant or mini storage. Because of the easement constraints, only 16 percent of the 1.88-acre site would be used for the facility. Most of the property would be landscaped, the building would be tucked against the hillside, and he planned to improve both sides of Sabercat Road, which, in his opinion, would be a dramatic improvement for that corner. The seismic fault was above Sabercat Road on the other portion of the parcel. The easements dictated the use of the site. He expected that the logo would alert the traveler of their existence. Over time, the subtlety of the architecture, the gift shop and clean bathrooms worked in their favor. People would want to come back.

Vice-Chairperson Wieckowski opened the public hearing.

Elena Taube, local resident, introduced her brother, David, and stated that they opposed this project. She was an Ohlone College student and she traveled past the site approximately 15 times a day. The traffic was currently very heavy without the introduction of the gas station.

A church was located across the street from the site where a childcare center was located, which would create safety hazards.

David Taube stated that when living at their former residence, he had witnessed drug-related activity that had occurred in the vicinity of the local Seven/Eleven convenience store. He feared the same kind of "filth" could find its way to this location.

Himanshu Sanghavi, resident within 300 feet of the project, stated that he and his neighbors all had similar concerns and a total of approximately 40 area residents had signed a petition that stated:

- **The subject parcel was designated as a city gateway and any proposed development on this site must demonstrate that it had achieved the special General Plan designation objectives and goals.** A gas station was not appropriate as a gateway. Two other stations were located less than 1500 feet from the proposed station on the other side of I-680 freeway.
- **Storage and distribution of combustible fluids in close proximity to the Hayward Fault.** They asked that a geotechnical study be performed before the rezoning was approved rather than after approval concerning the proximity of the active fault.
- **The proposed Sabercat Shopping Center study did not take into account this proposed project.** This was a busy intersection and they requested a study be performed to ascertain the traffic impact on the area by both projects, together.
- **The land east of Sabercat Road was home to a variety of wildlife** and they asked that it be protected to maintain the open space that added charm to an otherwise developed neighborhood.
- **This project was not in keeping with the general atmosphere of the neighborhood.** A church with daycare and youth facility and single-family homes surrounded the site for the proposed project. They requested that a more family-friendly development be considered east of I-680 and confine commercial and industrial uses to west of I-680.
- **There seemed to be no restriction on the operating hours for the gas station and the food mart.** They feared the increased traffic, noise, and nuisance that would be associated with a gas station that operated 24 hours a day. They asked for restrictions on the hours of operation on any facility that might be located on this site.
- **Any facility located on this site should be restricted from selling alcohol and tobacco products.**

Ramesh Yadava complained that 450 homeowners had not been notified of this project, although they all used Sabercat Road to enter and exit their neighborhood. He had heard about this project just two days ago. He asked that all of the local homeowners be notified of any project in this area in the future. He mentioned that "it was a nice and pleasant sight to watch the deer" on the property of the proposed project. He asked that a decision on this project be delayed until each of the 450 homeowners in the area was informed of it.

Vinad Rao, Cameron Hills Drive resident and board member of the Cameron Hills Homeowners Association, stated that he had become aware of this project on May 26th. He told his members of the project during a meeting held on May 26th and most of the members felt that a gas station was not the appropriate business for this site.

Steven Chan, Euclid Place resident, believed that with the gas station being visible to a high-speed, six-lane, interstate artery, more customers than the proposed four pumps could handle would add to the traffic now experienced by the local residents. Sabercat Road was the only road that allowed access to the freeway by the local residents (a back road allowed access to Paseo Padre Parkway). Unsynchronized signals exacerbated the traffic trying to access the freeway. He asked if a traveler would see a sign that would tell him that the station had only four pumps and that they should not exit the freeway until one of the pumps was available for his use.

Than Hui, Euclid Drive resident, was surprised and angry when, on May 26th, she heard about this hearing and realized she had not received a notice, although she lived within 300 feet of the property. She questioned how much convenience this gas station would provide to the 450 residents living on the east side of the freeway. She stated that she did not patronize the gas stations across the freeway, as she chose to go elsewhere for less costly gas. She wondered why a gas station would choose to not look like a gas station when the success of such a business depended upon drawing customers to the station. A high volume would create a successful business and she wondered what kind of a business this gas station would turn out to be if it did not have a high volume of customers. She believed that increased traffic could hinder evacuation of the neighborhoods if a fire occurred in this area. This was the wrong location for this applicant.

Mr. Schaadt closed by stating that he did not plan to develop the parcel across Sabercat Road. He reiterated that Sabercat Road would be improved, only 18 percent of the property would be developed and the expected volume of customers would not add to the current traffic volume. He noted that this parcel was zoned commercial and had a right to be developed. In his opinion, this project was an appropriate use for the property, and he did not expect the business to fail at this location.

Vice-Chairperson Wieckowski closed the public hearing and asked how this project had been noticed.

Planning Director Meeker answered that noticing was based upon the actual area to be developed rather than the actual boundaries of the property which flanks Sabercat Road. He agreed that a case could be made that a larger area could have been noticed, rather than just near the development site. It was also noticed in the Argus newspaper, as required. Whether or not the properties located further up the hill were noticed did not invalidate the noticing for this public hearing.

Commissioner Sharma opined that perhaps the people who did not receive a notice were further away from the project than 300 feet. However, it was common sense that everyone who lived in the hills off Sabercat Drive would be impacted by any project on this property. He asked if the noticing policy should be reviewed to make certain that people who might be impacted by a project, but were not necessarily within 300 feet of the site, were notified.

Planning Director Meeker replied that courtesy noticing was periodically performed when it was obvious to staff that the project would be of interest to more people than those who lived within 300 feet of the site. In this case, he agreed that noticing could have been expanded to include the residents above the east side of the property. If the Commission felt that the noticing was insufficient, this project could be continued to allow for further noticing to provide the residents of that area a forum in which to comment.

Commissioner Natarajan asked if this parcel had been zoned by a City-initiated planned district and what was the intent. Was it to control the uses and architecture on this parcel? Were the kinds of uses appropriate to this parcel considered? Did staff have any idea of what kinds of viable uses would be appropriate for this parcel? She noticed that a condition concerning a restaurant use was part of the staff report. She asked if a fast-food restaurant that no one knew about was to be a part of this project.

Planner Nguyen stated that she was correct. The intent was to provide a southerly gateway to the City. The planned district would allow the city to consider the design of a project, as well as the proposed use. No appropriate uses were considered at the time of the citywide General Plan Amendment and rezoning. Viable uses could be a restaurant or retail uses. However, those kinds of uses would use as much of the parcel as possible. In the case of a restaurant, it could require additional parking (possibly on the portion of the property on the other side of Sabercat Road) and the hours of operation might have an adverse impact on the neighborhood. Typical, fast food, such as provided in AM/PM mini marts, would be available.

Commissioner Natarajan asked about the circulation being forced, as stated in the report. The project description talked about the orientation of the gas station and she wondered what that meant.

City Engineer Hughes replied that, due to the existing easements on the site, the site plan allowed for just one, long driveway that would be used for entering and exiting, which was different from the usual gas station site plan.

Planner Nguyen replied that the proposed orientation of the convenience market against the embankment area would be appropriate, which provided screening of the unattractive embankment. The glazing and orientation of the storefront that was oriented towards the interstate freeway met the goals and objectives of the gateway designation.

Commissioner Natarajan asked if State law allowed the pricing signage and if any of the other signs fell under this law.

Planning Director Meeker stated that the pricing signage was dictated by State laws.

Commissioner Harrison asked staff to address the seismic concerns.

Planner Nguyen replied that without the certainty that the project was approved, it would be a significant investment for the applicant to retain the professionals to develop the construction drawings for this project. Therefore, a study was part of the mitigation measures and part of the Conditions of Approval.

Commissioner Harrison summarized that after the project was approved, the study would be performed. If the study showed that it was not safe, the project could not proceed forward.

Planner Nguyen stated that he was correct.

Commissioner Harrison then asked if this area was part of the recently approved industrial moratorium or was it not applicable. At what stage was the previously approved shopping center that was planned adjacent to the applicant's property.

Planner Nguyen stated that the industrial moratorium was not applicable and was not in this area. He stated that the ordinance required that a gas station not be located directly adjacent to schools or uses involving immobile populations. In this case, the church was on the other side of Durham Road, at least 800 feet away. A 105,000 square foot shopping center with an underground parking structure had been approved. However, pending the decision to be

made by the Commission concerning this item, the shopping center had been put on hold. Staff anticipated that minor changes to the shopping center design plan would be scheduled to be heard by the Commission sometime in June.

Commissioner Harrison asked if the shopping center developer wanted the gas station project to be approved.

Planner Nguyen replied that they had not shown any objections to the gas station proposal.

Commissioner Sharma asked if the impacts noted in the report were similar to other gas station projects in the City, or were they greater, which would entail more mitigations. Was this the best use for this location, considering the safety concerns?

Planner Nguyen stated that a geotechnical report was required because of the various utility easements. Its recommendations were incorporated into the environmental document, which was site specific to this project. The gas station use was an appropriate use for a neighborhood commercial land use designation. Other uses might also be appropriate; however, the Planning Commission is being asked to make a decision regarding only this use, tonight.

Commissioner Lydon asked for clarification concerning any other developers who might be interested in this site. He asked if the shopping center developer wanted a gas station at this site or would they be interested in some other use for this site.

Planner Nguyen stated that no specific use was intended for this parcel. He did not know what the shopping center developer's preference was.

Commissioner Lydon was troubled about people who felt they should have been notified about a particular project. What would the impact be if the language were changed to say something like the 300 closest residents were notified as opposed to residents within 300 feet of the project? He doubted that many people lived within 300 feet of the site of this project.

Commissioner Harrison noted that only nine notices were sent out.

Vice-Chairperson Wieckowski replied that the City Council would have to approve any amendment to the zoning ordinance with respect to noticing requirements.

Planning Director Meeker agreed that it would be a policy decision made by City Council. He clarified that common areas within the homeowners association were adjacent to the property east of Sabercat Road and if that portion of the property (that was not to be developed) had been included in the notification, the homeowners association would have been notified. However, if no homeowners association existed, there would have been no notification, as there are few residences within 300 feet of that portion of the property.

Commissioner Natarajan asked if the noticing for the Sabercat Shopping Center was 1,000 feet. She knew that 1,000 foot noticing was sometimes done.

Planner Nguyen stated that the Sabercat Shopping Center noticing would have to be researched.

Planning Director Meeker agreed that 1,000 foot noticing was occasionally performed when staff believed that controversy might be associated with a development.

Vice-Chairperson Wieckowski called for a recess at 8:30 p.m.

Vice-Chairperson Wieckowski called the meeting back to order at 8:40 p.m.

Vice-Chairperson Wieckowski asked the Commission if they wished to continue this item to allow noticing the residents in the area.

Commissioner Sharma disclosed that someone from the public had telephoned him about the noticing of this project. He was not able to explain to the caller why he had not received a notice.

Commissioner Natarajan supported a continuance. However, she suggested that the Commission should voice its concerns about the project to the applicant.

Commissioner Lydon stated that he had concerns about the notification. He agreed that the applicant should not be held hostage and that he should be made aware of the Commissioners' concerns.

Commissioner Harrison agreed that the method of noticing could be improved. He recalled that the same concerns brought up tonight by the public had been expressed a few years ago during the City Council's hearing about the Sabercat Shopping Center. He asked that a condition be added that no alcohol be sold, should this project move forward. This may not be the best use of this land, therefore, he asked that other potential uses (and how they might tie in with the shopping center) be provided in the report when this project was brought back to the Commission. He apologized to the applicant for the continuance of this item.

Commissioner Natarajan agreed with the applicant that this was a commercial site. However, it was not just a commercial site, but it was a neighborhood commercial site, a City-initiated planned district, and a City gateway. Therefore, the City must look at projects for this site much more stringently than other sites. "This is not a use that projects an image for Fremont." She acknowledged that the applicant had worked extremely hard with staff to change the design, but "a well designed bad use is still a bad use." She worried about safety and the impact of lighting on the neighborhood. This was not a project that she would support.

Commissioner Sharma questioned whether another gas station was needed in the neighborhood. He listed the many gas stations that were currently operating nearby. He agreed that some other use should be considered for the gateway area. He also was concerned that not everyone who would be affected by this project had been adequately notified. He suggested a continuance to allow for broader notification.

Commissioner Lydon concurred with the other Commissioners. He hoped that some other kind of vibrant use (a gas station was not the worst nor the best use) could be found for this corner that would bring the neighborhood together in a spirit of acceptance and provide a sense of community. He could not envision a gas station on this site at this time.

Vice-Chairperson Wieckowski was pleased to see a project come before the Commission that left 86 percent of the property as open space, which was, in some way, a gateway concept. He suggested that some kind of public art might be incorporated into the landscaping plan when it came back to the Commission.

Commissioner Sharma asked if he could make a motion to deny the project, as it seemed that there might be a consensus among the Commissioners.

Planning Director Meeker replied that the Commission had the option to take action on the project.

Commissioner Natarajan asked if findings needed to be made to deny the project.

Senior Deputy City Attorney Seto replied that the conversation among the Commissioners had created the findings needed to deny the project. If the Commission's decision was appealed to City Council, the findings could be memorialized.

A discussion ensued concerning how many votes were needed to carry the motion.

Senior Deputy City Attorney Seto stated that four votes would be needed to approve the rezoning. However, to recommend a denial, three votes would carry the motion. The applicant could appeal the Commission's recommendation for denial to the City Council. If the Commission's action was not appealed, the request would die.

IT WAS MOVED (SHARMA/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE (3-2-0-2-0) THAT THE PLANNING COMMISSION THAT PLN2003-00119 BE DENIED.

The motion carried by the following vote:

AYES:	3 – Lydon, Natarajan, Sharma
NOES:	2 – Harrison, Wieckowski
ABSTAIN:	0
ABSENT:	2 – King, Weaver
RECUSE:	0

- Item 5. GONEY SANDHU RESIDENCE – East King Avenue – (PLN2004-00235)** - to consider a Conditional Use Permit to allow the construction and use of a 16,214 square foot new single-family residence (includes guesthouse, attached garage and unconditioned pool area) on an 80-acre Hill Area lot on East King Avenue (APNs 507-0124-027-00 and 028-00) in the Niles Planning Area. A Mitigated Negative Declaration has been prepared for this project.

ADDENDUM TO STAFF REPORT “ENGINEERING ANALYSIS” SECTION:

Street Improvements: The use of this lot requires that every street abutting such lot conform to the right-of-way width and street improvement requirements prescribed in the Street Right-of-way and Improvement Ordinance. The right-of-way for East King Avenue currently abuts the project lot in the southern corner, but complete street improvements were not completed. East King Avenue was partially improved and terminated with a temporary cul-de-sac bulb, adjacent to the remainder lot, as part of the development of Tract 7083, Mission Gardens. The subdivider provided a cash-in-lieu payment for removal of the temporary cul-de-sac and extension of the street to the subdivision boundary.

In accordance with the Street Right-of-way and Improvement Ordinance, the project shall dedicate right-of-way and install complete street improvements for the extension and terminus of East King Avenue. East King Avenue right-of-way was approved as a residential collector street standard, but staff recommends that the improvements within the exiting right-of-way and the new cul-de-sac bulb be reduced to minimize the grading and visual impact of the extended street.

In compliance with the development policy for Hillside Streets, staff recommends that East King Avenue be extended as a minor residential street with a pavement width of twenty-two feet (22'), with parking prohibited on both sides and a sidewalk along one side. East King Avenue shall terminate in a cul-de-sac bulb with a pavement radius of thirty-two feet (32'), which reflects an eight-foot (8') reduction in the City standard. All public utilities shall be extended to the end of East King Avenue, subject to review and approval of the utility agencies. The right-of-way dedication and street improvements are subject to review and approval of the City Engineer prior to issuance of any permit for development. Staff has annotated the site plan to reflect the right-of-way and street improvement requirement.

MODIFICATION TO EXHIBIT “B” (ADDED CONDITIONS):

27. *The applicant shall dedicate right-of-way and install complete street improvements for the public streets East King Avenue, which abuts the project site. The right-of-way shall consist of extending and terminating East King Avenue as a public cul-de-sac with a minimum right-of-way radius of thirty-seven feet (37') and pavement radius of thirty-two feet (32'). Required street improvements include, but are not limited to, removal of the existing temporary cul-de-sac constructed with Tract 7083, installation of pavement, curb, gutter, sidewalk, landscape, irrigation, streetlights, storm drain facilities, driveways, and other utilities. All required improvements and right-of-way dedications are subject to review and approval of the City Engineer prior to issuance of the encroachment, building, or grading permit.*
28. *The applicant shall apply for and receive approval of an encroachment permit prior to, or concurrently with, the building permit.*
29. *All new utility services shall be installed underground, subject to review and approval of the City Engineer prior to issuance of the encroachment permit.*
30. *The applicant shall dedicate a minimum six-foot (6') wide public service easement (P.S.E.) along the frontage of the East King Avenue cul-de-sac.*

Commissioners Harrison, Natarajan, Sharma, Lydon and Vice-Chairperson Wieckowski disclosed that they had toured the site with the applicant. Commissioner Natarajan had also spoken with the architect.

Dr. Goney Sandhu, applicant, stated that he had grown up in the City and that he practiced medicine in the City. He displayed photos and site plans that showed his 80-acre site and the surrounding areas. Story poles had been erected on the property and photos were taken from various public sites to demonstrate that the proposed residence would be difficult to see. Staff had suggested exploring alternate sites on the property. If the house were moved further into the saddle, much more grading would have to be performed. If the Commission decided that the road was not an issue, staff agreed that the current site was best. The design was single-story, mission style with tile roof and would step down to blend into the contour of the hills. The house would have five bedrooms (one of which would be occupied by his mother-in-law), a guesthouse (occupied by his parents), an indoor swimming pool and a five-car garage. The house would be built in a circular pattern around a courtyard area. A new “cool stone technology” finish would be used on the walls to provide a rustic appearance. Measure T required a maximum 20,000-square foot structure per 20-acre lot. This was an 80-acre lot with a residence of 16,000 square feet, which included all hardscape. The house would be sited in the saddle between two knolls 45 to 75 feet from the crest. The 20-foot wide graveled road to the site currently serves the Alameda County Water District. It crosses an area that was originally in excess of 30 percent slope in its natural condition).

Commissioner Harrison asked if the applicant knew when the existing road had been constructed.

Dr. Sandhu stated that the road was in existence when he was a boy and living in the area.

Vice-Chairperson Wieckowski opened the public hearing.

Susan Gearhart disclosed that she had also toured the site with the applicant. She believed that building on this site would be in conflict with Measure T, because it would be viewed from “public roads, trails or other places.” She mentioned the places and roads from which she believed the house would be seen. When standing at the site, she could see a BART train moving along the tracks and people walking around Quarry Lakes. Therefore, those people

would be able to see her and the walls of the house that would be 12 feet higher than her head. The attorney for Friends of the Hill Area Initiative felt that photomontages might bring about more information about just how visible the home might be. This large home would be very visible at night when the interior lights were on and she thought the house “would look like landing lights on northern Fremont.” The property was very large and she believed a better site for the house could be found within the 80 acres.

Kourosh Dinyari, 24-year King Court resident, lived directly at the bottom of the proposed site for the home. He recalled the gladiola farm and the cows and horses that he could see when he had first moved to the area. Those properties were now residential developments that he believed would not have been allowed under Measure T. He urged the Commission and staff to not allow any more destruction of the natural beauty of the City’s hills, as had happened in other nearby cities. He read a letter from Dr. Gary Louie, another resident of King Court, which expressed concern that this project could open the door to other development on 20-acre hill parcels. He recalled that during the El Nino storms of 1998, the existing road funneled “gushing” water down to the development below, which experienced flooding for two days. However, after reading the staff report, he began to feel more positive toward the project. In closing, he stated that he would withdraw his opposition to the project because one home on 80 acres was better than many.

Carol Kowalski, Fremont resident, stated that she had worked on Measure T and it did not say “you shall minimize how a building appears on the ridgeline or the toe of the hill. It says that you cannot see it.” She agreed that the proposed home probably would not be seen from the locations from which the photos were taken. However, the applicant presented a fallacious argument that, therefore, the house would not be seen from other sites in the area. She also suggested that some other site within the 80-acre parcel would be more appropriate. A 27-foot high story pole did not adequately mimic a 27-foot high wall. The Fremont hills gave her house value. To allow building in the hills would diminish the value of her home and all those of her neighbors. She also believed that this project could open the door to more development in the hills. She recalled the proposal for the Sprint transmission towers to be located in the hills and she believed that interested citizens would always have to be alert to development in the hills. If the letter of the law, as defined by Measure T, was not met, then an applicant should not be allowed to build.

Commissioner Sharma asked if her main interest was economic and if she was worried about how the project would affect her property values.

Ms. Kowalski agreed that any visible building on the face of the hill or on the ridgelines would negatively affect the value of her home.

Paul Knight, member of the Friends of the Hill Area Initiative, stated that, during the time he had been involved with Measure T, he had spoken with as many as 3,000 homeowners who almost unanimously agreed that there should be no more housing on the hillsides. He also had met with the applicant at the proposed site of the home. While standing at the base of the story boards (sic), he also could see the Niles District, the entire area of Quarry Lakes and some of the city. He also went to various public locations in Niles to determine if he could see the story boards (sic). As he moved west, he could see the lower story boards (sic), which showed the proposed roofline. He did not need binoculars. In his opinion, no portion of the home should be visible from anywhere in the city. The home should be sited elsewhere on the property.

James Gearhart, 46-year resident, stated that he had spent three hours at the Quarry Lake recreation area and, without binoculars, could see the story boards (sic) from every public access. He stated that he had also asked a ranger to verify that he could see the story boards (sic). The house would not be invisible, it was against Measure T and should be located somewhere else on the 80 acres.

Commissioner Sharma asked if Mr. Gearhart believed that house lights should be taken into consideration when any new project for the hills came to the City. He had noticed a house on the hill that had year-round Christmas lights. He thought it was beautiful, but realized that others may not have the same opinion.

Mr. Gearhart stated that he was not talking about lights, but that he was concerned about building on the ridgelines and hilltops.

Commissioner Harrison stated that Dr. Gearhart and his wife knew more about the hills than anyone else in attendance. He asked Dr. Gearhart's opinion about the appropriateness of the alternative sites that were considered as compared to the one being discussed tonight and if he had any opinion about the nearby fault.

Dr. Gearhart replied that those sites were used, because they were worse alternatives than the one chosen, not because the chosen site was the best. The City Engineers knew about the faults and the slide potential on the property better than he did.

Paul Kozachenko, attorney representing the applicant, reminded the public and the Commission that this was a very low density, residential project with one, single-story house on 80 acres. Some of the speakers implied that no residential use under Measure T was allowed, which was not true. The purpose of the ordinance was "to allow existing outdoor recreational use, agriculture and very low density residential." The applicant was entitled to building four 20,000-square foot homes on the 80 acres, but had chosen to build one home. He read from the staff report regarding acceptable locations and stated that this house would not be located on the ridgeline or the hilltop. The existing road would be utilized to minimize grading. He read from Measure T regarding visibility and concluded that Measure T did not say that a structure had to be invisible. If, in fact, Measure said that the house had to be invisible, this ordinance would take away private property rights, which was prohibited under the constitution. Regarding the speaker who feared the value of her property would decrease, the nearby residents would not see the house, so it could not affect the value of the nearby neighbors. He doubted that anyone using Quarry Lakes Park would notice the house, because the applicant had done a good job to minimize its visibility. Regarding Section 3, Measure T, Protection of Legal Rights, he stated, "If the interpretation of this ordinance causes there to be legal liability to the City, the City had the ability to approve development. And why is that here? Simply because there can't be a situation where someone who's entitled to build on their property is completely denied the economic use of that property by saying 'No Houses.'" He closed by asking the Commission to approve this project.

Vice-Chairperson Wieckowski called for a recess at 9:50 p.m.

Vice-Chairperson Wieckowski called the meeting back to order at 10:00 p.m.

Commissioner Harrison asked about the question raised by one of the speakers about outside and ambient lighting and if the road up to the home would be lighted.

Bruno Marcelic, architect, replied that no lighting was planned for the outside perimeter of the home, except emergency lighting. All of the lighting would be in the interior courtyard. He proposed recessed lighting within the house so that the actual light was not seen through the window. The road would not be lighted.

Commissioner Natarajan asked the applicant to explain the concept behind the unusual form of his "dream home" and what were the elements that he felt were important to incorporate into its design.

Dr. Sandhu replied that he did not want his home to be like “those huge houses that the audience talked about hanging on the hills.” He grew up with a residential design tradition that the western world called a courtyard and it was this design that he wished to replicate in his “dream home.”

Commissioner Natarajan asked if the mission style was chosen because its central focal point was the courtyard. She found it difficult to understand how the courtyard would function, given the size, slope and not having that sense of enclosure. How did he arrive at the shape of the home? She asked if the motor court was the only flat area within the complex, if it would contain the only usable outdoor space and if the applicant was comfortable with that. She asked how the wind would affect the use of the outdoor spaces. She asked if he had seen the faux finish that the architect had proposed.

Dr. Sandhu stated that she was correct, the mission style was chosen because the courtyard was standard. The design and shape of the home was taken from an existing home in the Bay Area that he had visited approximately 40 times to acquire a feeling for all of its spaces and the courtyard. The existing house was located on land that had the same topography as the location for his proposed home. He agreed that the motor court would be the only flat area and he was comfortable with it, because he had seen the existing home that he was emulating and how it was used. He agreed that the wind was a factor and he hoped that the saddle of the hill and the back of the house would minimize the affects of the wind. He had seen the faux finish and liked it.

Vice-Chairperson Wieckowski asked for questions from the Commission for staff.

Commissioner Natarajan complimented Planner Nguyen on the work he had done on the three complex projects before the Commission. She asked what the “significant mineral resource” was that was noted in the initial study. What was the maximum size for a secondary dwelling unit? Would the guest unit be considered a secondary dwelling unit if it did not have a kitchen and could it easily be converted to a secondary dwelling unit? Where were the four water tanks located? Should the visual impact of the tanks have been studied and should a condition be added concerning the color? What infrastructure was existing and what needed to be extended to the site? What would be the physical aspects of the site?

Planner Nguyen replied a significant mineral resource might be discovered on the 80-acre parcel, but far to the north of the project, which was based on a 1995 General Plan diagram. The maximum size for a secondary dwelling unit on 80-acre parcel would be 900 square feet, maximum two bedrooms. With no kitchen, it would not be considered a secondary dwelling unit. It could be converted if the unit met the recently approved standards and was limited to 900 square feet. The four water tanks would be located between two knolls and above the residence. They would be eight feet high and could contain up to 10,000 gallons of water at a 410-foot elevation. The knoll would adequately screen the tanks. He agreed that a condition could be added to ensure that the color treatment of the proposed water tanks would cause them to blend in with the hill area. The conditions required the applicant “to annex the proposed site, including the reservoir site and the PG&E property that traverses the project site (the 80-acre site) into the Alameda County Water District, as well as the Union Sanitary District systems. And that would have to go through Alameda County’s LAFCO Commission.” Some grading would be needed to create a sewer line that would connect at East King, as well as a water line.

Commissioner Natarajan asked if that meant trenching and if the location and impact had been studied.

Planner Nguyen replied that aspect of the project was not included in this submittal. No studies had been performed.

Commissioner Natarajan asked what improvements would have to be made to the existing road and what kind of material would be used for paving.

City Engineer Hughes replied that normally, asphalt was used for paving. The gravel driveway would have to be paved, along with the creation of drainage facilities to control and direct the water that would flow down the driveway during heavy rainfall.

Planner Nguyen replied that the proposal was for base rock and asphalt for the driveway.

Commissioner Natarajan asked what was involved in a Group 1 project for the NPDES permit. What would the visual impact be? Would the asphaltting of the existing road solve the water flow problem during heavy rains that was mentioned by one of the speakers? She asked what the report was talking about when it stated that the kind of grading being requested for this project was not usually permitted.

City Engineer Hughes stated that the NPDES permits were changing with new standards on beginning July 1st and this project would have to comply. The visual impact would be very limited because most of the construction would be on the existing road. The water flow would be addressed during the Development Review process. The grading mentioned in the report had to do with the three feet of cut requested for the footprint in order to construct the house three feet into the ground. In this case, increased grading would reduce the visibility. The grading that was stated in the ordinance was a guide for retaining walls next to the house.

Vice-Chairperson Wieckowski asked what would happen when “we leave Mission Boulevard.”

City Engineer Hughes replied that East King was terminated in a temporary cul-de-sac just above the newly built residences. From there to this property was public street right-of-way that was dedicated with that subdivision but not built because there was no need for it at that time. A new street ending in a new cul-de-sac at the edge of the applicant’s property would be constructed.

Commissioner Lydon asked if Measure T was being adhered to, considering the opposite opinions taken by the speakers and the applicant’s attorney.

Senior Deputy City Attorney Seto replied that one of the issues before the Commission and all of the elected bodies of the City was the interpretation of Measure T. One of the options before the Commission regarding all of the items that were “at issue”, such as the visibility issue, (minimizing versus invisibility), access over the existing fire road (existing or natural slope question), and all of those types of issues could be something that if it is in the interest of the Planning Commission, could be forwarded to the City Council for clarification. The Council could direct staff to come forward with more information for consideration. But your recommendation would first go to the City Council, then the City Council would have the opportunity to consider the issues you would like to have addressed, add that to issues that they might want to have addressed and then forward that to staff for more information.

Commissioner Lydon stated that he had spent most of the afternoon trying to find the story poles from the locations that were noted in the letter received from those who opposed the project. He had struggled to find the poles, even using binoculars, and could not see them from Isherwood Way and Paseo Padre Parkway. He likened it to flying into the Bay Area when one could see Lake Elizabeth, but the people on the ground at Lake Elizabeth could not see him. He also rode BART to Union City and could not see the story poles. He asked if this project met Measure T or did it not.

Vice-Chairperson Wieckowski suggested that the Commission ask the City Council to instruct staff to assist the Commission in evaluating the visual impact that the proposed structure would have.

A discussion ensued concerning the issue of visual impacts of structures in the hills and access definition, as required by Measure T. It was generally decided that the visibility of the project from public places had been minimized as much as possible.

Commissioner Harrison asked if this project were approved as recommended, would it go forward to City Council for approval.

Planning Director Meeker replied that the Commission's action would stand unless it was appealed.

Commissioner Lydon asked if any questions to be submitted to the City Council had to be verbalized at this meeting or would the Commissioners have some time to think about all that was said tonight and to formulate questions.

The Commission discussed how the clarification questions concerning Measure T that the Planning Commissioners and City Council might have and how City Council, Planning Commission and staff would handle them.

Vice-Chairperson Wieckowski stated that he would like to see how visible the home would be if it were built on ground that had been graded six feet into the slope rather than three feet and if it were moved back into the saddle of the two knolls more.

Commissioner Natarajan reiterated that it was the Planning Commission's job to review the site plan and architecture and she asked that the concepts and broader principals of design be explained. She also wanted assurance that Dr. Sandhu "completely and thoroughly understood what the building was going to be, looking at it in two dimensions." She asked if he was certain that the awkward interior space next to the master bedroom was what he wanted. She did not see a strong symmetrical design. She asked him if he was willing to work with staff regarding the structure where the indoor swimming pool would be located. It would have a lot of glazing and it would be that portion of the house that could be seen from Mission Boulevard when the lights were on. She asked if the existing home on which this proposed home was based was somewhere in the Bay Area where it could be visited. She asked if the landscaping had been determined and how the 30-foot wet band would be landscaped.

Dr. Sandhu replied that the design was his personal taste and that he had seen an existing structure (located in Los Gatos) that was very similar to this design. He was satisfied with the design and believed that it would turn out to be the way he expected. The interior spaces of the two designs were similar and he had also seen them, so he was certain that this design was what he wanted. He disagreed that the design was not symmetrical. He believed that the lighting could be minimized by the use of hidden lights that would provide no glare or reflection. He was not interested in designing a home that architects would approve of. He was satisfied with the design and this was what he wanted. The landscaping would be confined to the courtyard. He understood that trees and flammable vegetation could not be used around the perimeter of the home. He was willing to work with staff concerning this portion of the landscaping.

Commissioner Natarajan asked if the rotunda height was the same as the swimming pool structure. Had the architect worked on other houses with the proposed veneer? Why were vinyl-clad wood windows proposed, as they were not mission style? Was the five-car garage all one building or individual garages?

Mr. Marcelic, architect, replied that the rotunda would be slightly taller than the swimming pool structure, but it would be set back and down the hill from the pool structure, so it would not have any visual impact. He had not used this type of exterior finish, but he did not anticipate any problems. The windows were chosen because of their longevity. Wood would require periodic maintenance. The finish and color of the windows would be dark and in keeping with the mission style. The garage was one building with five doors with dormers on a single-gabled roof.

Commissioner Harrison asked if staff agreed that the proposed location for the home was still the best location within the 80-acre parcel now that the story poles were erected.

Planner Nguyen agreed that the location of the story poles was the best location for the project, as proposed. The knolls on the west and east sides of the saddle where the house was to be located visibly shielded it. However, the view corridor was on the north and south side of the saddle and staff agreed with the speakers that it could be seen from Quarry Lakes.

Vice-Chairperson Wieckowski asked the relevancy of the view of the proposed home from Mission Boulevard with regard to Measure T. He feared setting a precedent if just one view from one location, such as Mission Boulevard, was the only view taken into consideration.

Senior Deputy City Attorney Seto stated that was one of the issues that was open to interpretation.

Planning Director Meeker replied that Mission Boulevard, as the speakers indicated, was just one of many public locations scattered throughout this portion of the City.

Commissioner Harrison stated that he would like to hear Mr. Kozachenko, the applicant's attorney, argue the case that there were no ambiguities.

Mr. Kozachenko stated that there were no ambiguities, because low density, residential was allowed on this site. The house was not located on a hilltop or ridgeline. The photo displayed on the wall for the Commission was the Boomerette house in Los Gatos, and it was being used as an example of what the proposed house would look like. The ordinance did not mean that any structure should be invisible from every public place, ever. If that was the interpretation that the City chose to use, then any place (such as a satellite) could be viewed as a public place from which the house could be seen. The speakers might have felt that they did not want to see any more building in the hills, but Measure T was not written that way. He believed that the Commission had enough information to be able to make a decision at this hearing. The interpretation and clarification of Measure T could be argued forever. The staff report had covered everything very clearly.

Vice-Chairperson Wieckowski agreed that Measure T allowed low density housing, which this project was. He asked if the structure would project "above the ridgeline or hilltop when viewed from public roads, trails or other public places." He asked staff to request a clarification for the specific language referenced above.

Mr. Kozachenko replied that was exactly their position. The provision was written exactly to prevent a home from being constructed on top of a ridgeline or on top of a hill, like the Boomerette home.

Commissioner Natarajan asked if staff was comfortable with dealing with the issues discussed as the project moved forward, such as the site plan, infrastructure and some of the details that needed to be incorporated to make this house wonderful.

Planner Nguyen stated that staff was comfortable with the project, along with any direction that the Commission might make.

Commissioner Lydon believed that both the applicant and the opponents of this project were operating in good faith. Although the design of the home “seemed a little different to a lot of us.” The applicant believed in it and it was something he wanted. He had gone to the extreme to make sure that he did not offend the other 200,000 people in the City and the Measure T people.

Commissioner Natarajan agreed with Commissioner Lydon. She would support the project with some concerns. She would rely on staff to address the many details that could make or break the project, such as the water tanks, the landscaping, the infrastructure and the style of the house.

Commissioner Harrison and **Commissioner Sharma** agreed that staff had done a great job with this project.

Vice-Chairperson Wieckowski stated that he would not support the motion, because the public process would be best served if the Commission’s concerns could be fleshed out. These questions should remain in the public forum and debated in the public forum. He would have preferred that staff be given specific recommendations that City Council could have directed to be researched.

IT WAS MOVED (SHARMA/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (4-1-0-2-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

FIND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES. THEREFORE, FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES AND RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;

AND

ADOPT THE DRAFT MITIGATED NEGATIVE DECLARATION FOR THE PROJECT FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED AND CONDITIONED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FINDING THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

APPROVE A MITIGATION MONITORING PLAN FOR THE PROJECT;

AND

FIND THAT THE PROPOSED PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY’S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN’S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT CONFORMS TO THE GOALS AND POLICIES AS ENUMERATED IN THE STAFF REPORT AND FINDINGS EXHIBIT ADOPTED/RECOMMENDED HEREWITH;

AND

FIND THAT THE PROPOSED PROJECT PLN2004-00235 IS IN CONFORMANCE WITH THE PERFORMANCE STANDARDS CONTAINED IN THE HILL INITIATIVE OF 2002, MEASURE T FOR THE REASONS INDICATED IN THIS STAFF REPORT;

AND

DELEGATE TO THE CITY ENGINEER THE AUTHORITY TO APPROVE THE PRELIMINARY GRADING PLAN, AS CONDITIONED;

AND
APPROVE PLN2004-00235, AS SHOWN ON EXHIBIT “A”, SUBJECT TO FINDINGS AND
CONDITIONS IN EXHIBIT “B”.

The motion carried by the following vote:

AYES:	4 – Harrison, Lydon, Natarajan, Sharma
NOES:	1 - Wieckowski
ABSTAIN:	0
ABSENT:	2- King, Weaver
RECUSE:	0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Information from Commission: Commission members may report on matters of interest.

Commissioner Harrison understood that the Office of Neighborhoods had a list of homeowners associations within the City. He suggested that the two homeowners associations nearest to a project be notified, which could supplement the 300-foot noticing that was usual for projects due to be heard by the Planning Commission. He asked if this could be decided on the Planning Commission level or did it have to be decided by City Council.

Senior Deputy City Attorney Seto replied that it could be given as direction to staff. The Office of Neighborhoods has mail and email contacts with the homeowner associations. Costs would not be as big an issue if the City could use the e-mail method.

Commissioner Lydon recalled that the fire department used to use Metro Scan and it had worked well for notifying residents. He asked that using Metro Scan be explored as a method for notification.

Commissioner Sharma suggested that the City web site post information, i.e., permits, by neighborhood, for use by interested citizens. He asked whom to contact and how to begin the process to provide this kind of online information.

Planning Director Meeker agreed that his suggestion had merit and was worth discussion; many cities wrestled with this issue. He was not sure that it could be technically achieved at this time. He promised to discuss his suggestion at the staff level and report back to the Commission.

Commissioner Natarajan noted that a tracking system for the DO process was available online and asked if Commissioner Sharma's suggestion was already in place.

Planning Director Meeker asked if Commissioner Sharma was interested in viewing the proposed plans that went along with the permit process.

Commissioner Sharma replied that he believed just being able to discover what was planned in a neighborhood or concerning a property would be adequate for the time being. He understood that giving complete details of a project would probably be labor intensive and probably would not be necessary.

Commissioner Natarajan stated the sites left in the city were difficult and constrained, and she asked that a model be required to give staff and the Commission a three-dimensional idea of what was planned and/or the building footprints of adjacent buildings. A three-dimension model

would have been of enormous help when reviewing the Sandhu project and adjacent structure footprints would have helped the Commission when deciding on the Prasad residence. She also asked for a concept diagram that talked about the initial philosophy and concept of the applicant's design, which would help Commissioners to understand how the design was arrived at.

Commissioner Natarajan also mentioned that she had attended an inspiring lecture by Jane Jacobs in San Francisco, who was 88 years old. It made her proud to be a planner and to be on the Commission.

Meeting adjourned at 11:35 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

William Meeker, Secretary
Planning Commission